S.B. Civil Revision Petition No.239/2004
Heeralal & Anr.
vs
Daulat Ram & Ors.

DATE OF ORDER : - 4.8.2005

HON'BLE MR. PRAKASH TATIA,J.

Mr.GR Goyal, for the petitioner.
Mr.RK Singhal]
Mr.RK Thanvi], for the respondents.

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Heard learned counsel for the parties.

The petitioner is aggrieved against the order dated 29th May, 2004 by which petitioner's application filed under Order 7 Rule 11 CPC was dismissed by the trial court.

According to learned counsel for the petitioner the suit filed by the plaintiff is barred under Section 257 of the Rajasthan Tenancy Act as the plaintiff in his suit claimed that the defendants no.1 and 3 conclusively obtained an order from the District Collector and that order is appealable.

I considered the submissions of learned counsel for the petitioner and perused the plaint. The plaintiff in his plaint challenged the order

passed by the learned District Collector on the ground that the order was obtained by collusion of defendants no.1 and 3 and he also prayed that the order may be declared to be ineffective against the interest of the plaintiff.

Admittedly, the plaintiff was not party in the proceedings before the Collector where the order was passed and which has been challenged by the plaintiff in the present suit. The plaintiff had no right to prefer appeal as his right to appeal was dependent upon the permission of the appellate court. Apart from it, the plaintiff's claimed that even if order cannot be set aside, it will have no effect upon the interest of the plaintiffs. Therefore, in the alternative, the plea of the plaintiff is that he can protect his right without getting the order under challenge cancelled as that has not been passed after giving opportunity of hearing to the plaintiff.

In view of all these questions, the trial court has merely held that the defendant may take objection in the written statement. Learned counsel for the respondent submits that now the written statement has also been filed.

In view of the above, the trial court has not committed any illegality in holding that the objection raised by the defendant can be

decided only after evidence and not by way of application and therefore, I do not find any illegality in the order.

Hence, the revision petition of the petitioner is dismissed.

(Prakash Tatia), J.

c.p.goyal/-